UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

In re: Mortgage Foreclosure Cases  Misc. no. 11-mc-88-M-LDA

**SHOW CAUSE STATEMENT OF PLAINTIFF JOHN FERRARO Jr.12-100**

Now comes the Plaintiff, through counsel, and hereby states as follows. The plaintiffs are not currently occupying the house and this is why payments are not being made. While this counsel has no intention of pandering to the Court and is certain that this Honorable Court is keenly aware of what a use and occupancy payment consists of and its purpose it must be pointed out that if the Plaintiff is no longer living in the property then they are not afforded the protection of the stay and process set up by this Court.

It is the position of the Special Master that "the use and occupancy fee is in return for the injunction against foreclosure and, moreover, gives them the ability to occupy the house while the case is pending and the injunction is outstanding. Whether they choose to occupy the house or not, they retain the ability to do so." This is illogical and patently wrong. The Plaintiffs have not made a choice and do not have the ability to do so. If the Plaintiffs are no longer living in their homes it is as a result of the Defendants having previously removed them. In these situations the Plaintiffs have not been afforded the protection of the "injunction against foreclosure" further they do not have the "ability to occupy the house while the case is pending" as they have already been removed.

Additionally while the use and occupancy payment may afford the Plaintiffs the opportunity and ability to occupy their homes, ability and opportunity don't amount to very much if someone else has actual possession. The situation is analogous to paying to rent a car but not being given the keys to drive. For a plaintiff that is not in the home to pay use and occupancy begs the question what are they renting and occupying that necessitates these payments.

For these reasons this Honorable Court has as recently as this past August seen fit to deny the dismissal of cases in which the Plaintiff has not paid use and occupancy payments. See. O'Hern v. MERS et. al., Civ. No. 1:10-cv-00195-M-LDA. In that case this Court chose to focus on the practical realities of when the Plaintiff does not live in the home no use and occupancy is due as the harm the stay provides protection for has already happened and no one is in reality using or occupying the home. As such, in O'Hern this Court rightly held that no use and occupancy is due for plaintiffs not living in their homes and as a result dismissal for lack of payment is improper. The same holding should be found in this case.

Respectfully Submitted,
John Ferraro Jr.

/s/George E. Babcock, Esq.
George E. Babcock, Esq.
Babcock Law Offices
574 Central Avenue
Pawtucket, RI 02861
401-724-1904
Goerge.Babcock@babcocklawoffices.com

**CERTIFICATION**

I, George E. Babcock, Esquire, hereby certify that this document was filed through the Court's ECF System and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF)and paper copies will be sent to those indicated as non-registered participants on November 27, 2012.

/s/George E. Babcock, Esq.
George E. Babcock, Esq.